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EXHIBIT G

ROTHY'S, INC. vs BIRDIES, INC.

Bianca Gates on 02/11/2022

Attorneys Eyes Only

Confidential - Attorneys' Eyes Only
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROTHY'S, INC., §
§ CIVIL ACTION FILE NO.
§ 3:21-cv-02438-VC
Plaintiff, §
§
vs. §
§
§
BIRDIES, INC., §
§
§
§
Defendant. §
§
~~~~~

VIDEOTAPED DEPOSITION OF  
BIANCA GATES  
CONDUCTED REMOTELY

9:05 a.m. PST  
Friday, the 11th day of February 2022

Blanche J. Dugas, CRR, RPR, CCR No. B-2290

## ROTHY'S, INC. vs BIRDIES, INC.

Attorneys Eyes Only

Bianca Gates on 02/11/2022

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|--------|-------------------------------------|--|--|--------|----|-----------------------------|-----|
| 1      | APPEARANCES OF COUNSEL              |  |  | 1      | 45 | E-mail string, Subject: A   | 71  |
| 2      | On Behalf of the Plaintiff:         |  |  | 2      |    | shipment from order #3904   |     |
| 3      | STEVEN D. MOORE, Esquire            |  |  | 3      |    | is on the way,              |     |
| 4      | Kilpatrick Townsend & Stockton, LLP |  |  | 4      | 46 | Bates-stamped               | 72  |
| 5      | Suite 1900                          |  |  | 5      |    | BIRDIES_00066039 & 66040    |     |
| 6      | Two Embarcadero Center              |  |  | 6      |    | E-mail from Bianca Gates to |     |
| 7      | San Francisco, California 94111     |  |  | 7      |    | Roth Martin dated Sunday,   |     |
| 8      | (415) 273-4741                      |  |  | 8      |    | 7/16/2017, Subject:         |     |
| 9      | (415) 651-8510 (facsimile)          |  |  | 9      |    | Catching up this week!      |     |
| 10     | smoore@kilpatricktownsend.com       |  |  | 10     |    | Bates-stamped               |     |
| 11     | KASEY E. KOBALLA, Esquire           |  |  | 11     | 47 | BIRDIES_00066127            | 74  |
| 12     | Kilpatrick Townsend & Stockton, LLP |  |  | 12     |    | E-mail from Bianca Gates to |     |
| 13     | Suite 1400                          |  |  | 13     |    | Roth Martin dated Sunday,   |     |
| 14     | 4208 Six Forks Road                 |  |  | 14     |    | 7/22/2019, Subject: Forbes  |     |
| 15     | Raleigh, North Carolina 27609       |  |  | 15     |    | article, Bates-stamped      |     |
| 16     | (202) 639-4713                      |  |  | 16     |    | BIRDIES_00068457            |     |
| 17     | kkoballa@kilpatricktownsend.com     |  |  | 17     | 48 | E-mail string, Subject:     | 76  |
| 18     | On Behalf of the Defendant:         |  |  | 18     |    | Allbirds purpose - as per   |     |
| 19     | DAVID TELLEKSON, Esquire            |  |  | 19     |    | their VP/CMO Marketing      |     |
| 20     | JESSICA KAEMPF, Esquire             |  |  | 20     |    | more mission thinking       |     |
| 21     | Fenwick & West, LLP                 |  |  | 21     |    | below, Bates-stamped        |     |
| 22     | 10th Floor                          |  |  | 22     |    | BIRDIES_00067835 through    |     |
| 23     | 1191 Second Avenue                  |  |  | 23     |    | 67837                       |     |
| 24     | Seattle, Washington 98101           |  |  | 24     | 49 | Internal Birdies messages,  | 84  |
| 25     | (206) 389-4550                      |  |  | 25     |    | Bates-stamped               |     |
|        | dtellekson@fenwick.com              |  |  |        |    | BIRDIES_00061325            |     |
|        | jkaempff@fenwick.com                |  |  |        | 50 | Internal Birdies messages,  | 84  |
|        | Also Present:                       |  |  |        |    | Bates-stamped               |     |
|        | James Downie, videographer          |  |  |        | 51 | BIRDIES_00061334            | 87  |
|        | Susie Moore                         |  |  |        |    | Photograph of leopard       |     |
|        |                                     |  |  |        | 52 | sneakers                    |     |
|        |                                     |  |  |        |    | Cloud Slack messages,       | 96  |
|        |                                     |  |  |        |    | Bates-stamped               |     |
|        |                                     |  |  |        |    | BIRDIES_00077451 through    |     |
|        |                                     |  |  |        |    | 77453                       |     |
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|        |                                     |  |  |        |    | Bates-stamped               |     |
|        |                                     |  |  |        |    | BIRDIES_00061352            |     |
|        |                                     |  |  |        |    |                             |     |

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| 4      | BY MR. MOORE         |                             |      | 4      | 56 | 77251                       | 127 |
| 5      | - - -                |                             |      | 5      |    | Internal Birdies messages,  |     |
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| 7      | EXHIBIT              | DESCRIPTION                 | PAGE | 7      |    | BIRDIES_00061343            |     |
| 8      | 37                   | LinkedIn profile            | 14   | 8      | 57 | Cloud Slack messages,       | 129 |
| 9      | 38                   | Instagram post from Stubbs  | 41   | 9      |    | Bates-stamped               |     |
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| 12     | 40                   | Design Co.                  | 48   | 12     | 59 | E-mail string, Subject: New | 134 |
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| 18     | 43                   | 634                         | 63   | 18     |    | BIRDIES_00069910 and 69911  |     |
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| 23     |                      | Great seeing you this       |      | 23     |    | Cloud Slack messages,       |     |
| 24     |                      | weekend - let's catch up    |      | 24     |    | Bates-stamped               |     |
| 25     |                      | soon!, Bates-stamped        |      | 25     |    | BIRDIES_00077219 through    |     |
|        |                      | ROTHYS0002792 & 2793        |      |        |    | 77221                       |     |
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|        |                      | shipment from order #3904   |      |        |    | Slippers but better,        |     |
|        |                      | is on the way,              |      |        |    | Bates-stamped               |     |
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|        |                      |                             |      |        |    |                             |     |
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| 3      | 66   | E-mail from Marisa Sharkey to Bianca Gates, Subject: Check out Rothys's, Bates-stamped BIRDIES_0006521                                | 168 |        |    | (Original Exhibits 37 through 83 have been attached to the original transcript.) |     |
| 4      |      |                                                                                                                                       |     | 3      |    |                                                                                  |     |
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| 9      | 68   | E-mail from Bianca Gates to Marisa Sharkey dated Tuesday, 6/7/2016, Subject: Project update, Bates-stamped BIRDIES_00065829 and 65830 | 171 | 8      |    |                                                                                  |     |
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| 15     | 70   | E-mail string, Subject: Rothys photos, Bates-stamped BIRDIES_00066581 and 66582                                                       | 177 | 14     |    |                                                                                  |     |
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| 17     | 71   | E-mail string, Subject: Rothys...some weekend baseball sideline information-gathering, Bates-stamped BIRDIES_00066626 and 66627       | 179 | 16     |    |                                                                                  |     |
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| 21     | 72   | E-mail string regarding Rothys to hit \$140M this year, Bates-stamped BIRDIES_00067885                                                | 186 | 20     |    |                                                                                  |     |
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| 24     |      |                                                                                                                                       |     | 23     |    |                                                                                  |     |
| 25     |      |                                                                                                                                       |     | 24     |    |                                                                                  |     |
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| 1      | 73   | E-mail from Kimberly Wheeler dated Tuesday 7/23/2019, Subject: WOM Program for Birdies, Bates-stamped BIRDIES_00068459                | 189 | 1      |    | Videotaped Deposition of Bianca Gates February 11, 2022                          |     |
| 2      |      |                                                                                                                                       |     | 2      |    |                                                                                  |     |
| 3      |      |                                                                                                                                       |     | 3      |    | VIDEOGRAPHER: This is the beginning                                              |     |
| 4      | 74   | E-mail string, Subject: IG stories to repost this week, Bates-stamped BIRDIES_00068803 through 68808                                  | 191 | 4      |    | of Media 1 in the deposition of Bianca                                           |     |
| 5      |      |                                                                                                                                       |     | 5      |    | Gates in the matter of Rothys's,                                                 |     |
| 6      |      |                                                                                                                                       |     | 6      |    | Incorporated versus Birdies, Incorporated.                                       |     |
| 7      |      |                                                                                                                                       |     | 7      |    | Today's date is February 11, 2022. The                                           |     |
| 8      | 75   | E-mail string, Subject: Correspondence from Michelle Mancino Marsh, Bates-stamped BIRDIES_00069960                                    | 194 | 8      |    | time is 9:05 a.m.                                                                |     |
| 9      |      |                                                                                                                                       |     | 9      |    | Will the attorneys present please                                                |     |
| 10     |      |                                                                                                                                       |     | 10     |    | introduce themselves for the record, after                                       |     |
| 11     | 76   | Letter dated March 9, 2021 to Birdies, Inc. From Michelle Mancino Marsh, Bates-stamped BIRDIES_00069961 through 69964                 | 197 | 11     |    | which the court reporter will swear the                                          |     |
| 12     |      |                                                                                                                                       |     | 12     |    | witness.                                                                         |     |
| 13     |      |                                                                                                                                       |     | 13     |    | MR. MOORE: Good morning. This is                                                 |     |
| 14     | 77   | E-mail string, Subject: Rothys photos, Bates-stamped BIRDIES_00066574 through 66580                                                   | 200 | 14     |    | Steve Moore from Kilpatrick Townsend on                                          |     |
| 15     |      |                                                                                                                                       |     | 15     |    | behalf of the plaintiff, Rothys's.                                               |     |
| 16     |      |                                                                                                                                       |     | 16     |    | MR. TELLEKSON: David Tellekson with                                              |     |
| 17     | 78   | Cloud Slack messages, Bates-stamped BIRDIES_00076857 through 76879                                                                    | 201 | 17     |    | Fenwick & West on behalf of Birdies.                                             |     |
| 18     |      |                                                                                                                                       |     | 18     |    | (Counsel for all parties stipulate                                               |     |
| 19     |      |                                                                                                                                       |     | 19     |    | that the Court Reporter is authorized to                                         |     |
| 20     | 79   | Instagram posts                                                                                                                       | 210 | 20     |    | swear the witness remotely.)                                                     |     |
| 21     | 80   | Cloud Slack messages, Bates-stamped BIRDIES_00077204 through 77207                                                                    | 210 | 21     |    | BIANCA GATES,                                                                    |     |
| 22     |      |                                                                                                                                       |     | 22     |    | having been first duly sworn, was examined and                                   |     |
| 23     | 81-1 | JPEG files                                                                                                                            | 231 | 23     |    | testified as follows:                                                            |     |
| 24     | 81-2 | JPEG files                                                                                                                            | 231 | 24     |    | EXAMINATION                                                                      |     |
| 25     | 82   | JPEG file                                                                                                                             | 234 | 25     |    | BY MR. MOORE:                                                                    |     |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 strike that.</p> <p>2 Do you know whether the materials used in</p> <p>3 Rothy's' shoes for the upper portion of the shoe is</p> <p>4 knitted?</p> <p>5 A. I -- presumably. I mean, I couldn't say</p> <p>6 specifically that is the -- what they do, but we -- I</p> <p>7 reference it as a knit, but because I don't know</p> <p>8 specific the names of the ways of creating that</p> <p>9 design.</p> <p>10 Q. All right. Did you have any concern about</p> <p>11 approving the knit Blackbird because of your knowledge</p> <p>12 of Rothy's' knit shoes?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 A. It was our shoe. It's our Blackbird shoe</p> <p>16 that we've had since 2015, and we have used a variety</p> <p>17 of materials throughout the years, and adding a new</p> <p>18 material like this knit was not going to be any</p> <p>19 different than what we've done from 2015.</p> <p>20 Q. Well, you -- Birdies had never used a knit</p> <p>21 in The Blackbird before February of 2021; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And Birdies had not used a knit for the</p> <p>24 upper of any of its shoes before February of 2021;</p> <p>25 correct?</p>                                                                                                                  | <p>1 Exhibit 52.</p> <p>2 Just please let me know when you have that</p> <p>3 one before you and you've had a chance to look at it.</p> <p>4 And -- well, this isn't terribly lengthy.</p> <p>5 It's a Slack chat transcript. I'm happy to refer you</p> <p>6 to the messages I want you to look at, but you're</p> <p>7 welcome to look at the whole thing if you'd like.</p> <p>8 (Plaintiff's Exhibit 52 was marked for</p> <p>9 identification.)</p> <p>10 MR. TELLEKSON: Steve, which exhibit?</p> <p>11 Did you say 52?</p> <p>12 MR. MOORE: That's right.</p> <p>13 THE WITNESS: Okay.</p> <p>14 Q. (By Mr. Moore) This is a piece of a Slack</p> <p>15 conversation between you and it looks like 42 other</p> <p>16 participants; is that correct?</p> <p>17 A. That's what it says here.</p> <p>18 Q. Are you familiar with which particular</p> <p>19 channel on the Birdies Slack platform this is?</p> <p>20 A. It doesn't say here. I don't know which one</p> <p>21 it would be.</p> <p>22 Q. Do you have a number of different channels</p> <p>23 on Slack to which you are a participant?</p> <p>24 A. Oh, yeah. Many.</p> <p>25 Q. Okay. Does this channel include anybody who</p>                                                                                                                                                                                            |
| <p>1 A. Correct.</p> <p>2 Q. Did Birdies do anything to investigate</p> <p>3 whether Rothy's owned any patents or other</p> <p>4 intellectual property pertaining to Rothy's shoes?</p> <p>5 A. I can only speak behind -- on my own</p> <p>6 account, and I have never done any research in that.</p> <p>7 I don't believe anybody at the company has, but you'd</p> <p>8 have to ask them.</p> <p>9 Q. Did Birdies do anything to ensure that it</p> <p>10 did not infringe upon any patents held by Rothy's</p> <p>11 before it launched the knit Blackbird?</p> <p>12 A. Again, I can only speak on my own behalf. I</p> <p>13 have -- I did not, but I don't know to what extent</p> <p>14 anybody else did. To my knowledge, they did not.</p> <p>15 Q. And you are the chief executive officer of</p> <p>16 the company; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you didn't ask anybody either at Birdies</p> <p>19 or externally to do anything to ensure that there was</p> <p>20 no infringement of any Rothy's patents before Birdies</p> <p>21 launched the knit Blackbird; correct?</p> <p>22 A. Correct.</p> <p>23 Q. All right. There's a number of additional</p> <p>24 exhibits we've added to the share folder. If you'd</p> <p>25 please turn to that. I believe the next one up is</p> | <p>1 is external to Birdies?</p> <p>2 A. I'd have to go through all of the names.</p> <p>3 Well, the names I'm reading here, the number</p> <p>4 of participants, many of them were not around in 2018,</p> <p>5 and you're referencing Slack from 2018.</p> <p>6 Q. So what does that tell you?</p> <p>7 A. I don't know where you pulled this from. It</p> <p>8 just -- it doesn't relate to -- what I'm reading here</p> <p>9 on -- on Page 4 is from 2018. But when you're asking</p> <p>10 me to confirm the individuals at the company, a lot of</p> <p>11 these individuals were not here then. So I'm confused</p> <p>12 as to what specifically this document is that I'm</p> <p>13 looking at.</p> <p>14 Q. Ms. Gates, any Birdies document I received</p> <p>15 from your counsel. So I'm showing you what I've got.</p> <p>16 As counsel knows, we have a dispute over Birdies'</p> <p>17 decision to only provide portions of its Slack</p> <p>18 messages. So I'm afraid I can't answer your question.</p> <p>19 But I'll ask my question again, which is:</p> <p>20 Is anybody on this Slack chat external to Birdies?</p> <p>21 A. Well, Jacquie Lenart is on here, and she, as</p> <p>22 I mentioned before, is our consultant. So she's not</p> <p>23 full-time employed by Birdies, but she does work with</p> <p>24 Birdies.</p> <p>25 Q. Anyone else that you can see?</p> |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 98</p> <p>1 A. To be honest, I don't -- well, there's --</p> <p>2 nobody else -- nobody seems to be external other than</p> <p>3 Jacquie Lenart, but she was a paid consultant, so I</p> <p>4 guess that would make her internally, but no, she's</p> <p>5 not a full-time employee, but nobody external.</p> <p>6 Q. Okay. Now, going to the last page of</p> <p>7 Exhibit 52, I'll direct your attention to the last two</p> <p>8 chats. The second-to-last is from Adriana. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. And she says, "A little hashtag Monday inspo</p> <p>12 brought to you by a happy customer. Amazing use case</p> <p>13 and reinforces our brand messaging." And then she</p> <p>14 quotes the customer's remarks; correct?</p> <p>15 A. That's what I read here, yes.</p> <p>16 Q. All right. And you respond immediately</p> <p>17 below that; correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And you say, "Hi, OMG, love</p> <p>20 this. However, it does feel like we are overlapping</p> <p>21 more and more with Rothy's' use case."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. You say, "Different styles obviously, but</p> <p>25 something to keep in mind, especially if we play</p> | <p style="text-align: right;">Page 100</p> <p>1 A. We decided to continue to expand based on</p> <p>2 how our customers were wearing our shoes.</p> <p>3 Q. So in other words, Birdies started releasing</p> <p>4 shoes that were more focused on outdoor use cases?</p> <p>5 A. Yes.</p> <p>6 Q. Now, you said, "Different styles obviously."</p> <p>7 Are you referring to the fact that Rothy's and Birdies</p> <p>8 had different styles?</p> <p>9 A. Yes.</p> <p>10 Q. So as of August 2018, you did not believe</p> <p>11 that Birdies had anything of the same style as</p> <p>12 Rothy's?</p> <p>13 MR. TELLEKSON: Objection, vague.</p> <p>14 THE WITNESS: Our shoe is a unique</p> <p>15 shoe. So just by that, I would define that</p> <p>16 we're different.</p> <p>17 Q. (By Mr. Moore) And in 2018, they were</p> <p>18 different from anything that Rothy's had on the market</p> <p>19 at that time.</p> <p>20 A. Yes.</p> <p>21 Q. All right. Now, I understand that the knit</p> <p>22 Blackbird was publicly released in February of 2021.</p> <p>23 Does that sound correct?</p> <p>24 A. Yes.</p> <p>25 Q. All right. If you'd go to the next exhibit,</p>                                                |
| <p style="text-align: right;">Page 99</p> <p>1 around with price points, et cetera"; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And then you compare testing a \$120 launch</p> <p>4 point versus \$165 for the Rothy's loafer. Is that</p> <p>5 what the last sentence says?</p> <p>6 A. Yes.</p> <p>7 Q. Why did you feel like Birdies was</p> <p>8 overlapping more and more with Rothy's' use case?</p> <p>9 A. Because our brand up until that time was --</p> <p>10 the use case was intended for the home, and our</p> <p>11 customers were starting to wear us more and more</p> <p>12 outside of the home. And I was unsure at that time in</p> <p>13 2018 whether or not we should, you know, expand as our</p> <p>14 customers were asking us to expand beyond the home or</p> <p>15 stay focused on just the home. So that's what I was</p> <p>16 referring to, use cases.</p> <p>17 Q. And what was Rothy's' use case at that time?</p> <p>18 A. They were marketing themselves more outside</p> <p>19 of the home.</p> <p>20 Q. So what did Birdies ultimately conclude with</p> <p>21 respect to whether to expand into an outdoor use case</p> <p>22 for its products?</p> <p>23 A. Did you say when?</p> <p>24 Q. What. Sorry. What did Birdies decide to</p> <p>25 do?</p>    | <p style="text-align: right;">Page 101</p> <p>1 please, which is Exhibit 53. I don't think I --</p> <p>2 MR. MOORE: For the record, 52 was</p> <p>3 BIRDIES, three zeros, 77450 through 77453.</p> <p>4 And then Exhibit 53 is BIRDIES_61352.</p> <p>5 (Plaintiff's Exhibit 53 was marked for</p> <p>6 identification.)</p> <p>7 Q. (By Mr. Moore) Just please let me know when</p> <p>8 you have that in front of you.</p> <p>9 A. Actually, can I get a moment to read it?</p> <p>10 Q. Please. And actually, before that, though,</p> <p>11 if you would please also pull up 77248. This is --</p> <p>12 sorry, what will be marked as Exhibit 54, which is</p> <p>13 BIRDIES_77248 through 77251, and the reason is that</p> <p>14 these are related.</p> <p>15 But yes, please review both of those and</p> <p>16 just let me know when you're -- when you're ready.</p> <p>17 (Plaintiff's Exhibit 54 was marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q. (By Mr. Moore) All right. Exhibit 53 is</p> <p>21 another excerpt of a Slack conversation; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it's dated -- this excerpt is dated</p> <p>24 February 9th, 2021.</p> <p>25 A. Yes.</p> |



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| <p>1 9:49 a.m. chat that you wanted to use for Courtney and<br/> 2 for others to consider as the right language for<br/> 3 others?<br/> 4 A. I wrote it after I saw the comment from<br/> 5 Courtney.<br/> 6 Q. Did you write it on your own or did you have<br/> 7 help?<br/> 8 A. Yes.<br/> 9 No, I wrote it on my own.<br/> 10 Q. Okay. Sorry. That was a bad question. You<br/> 11 wrote it on your own. Thank you.<br/> 12 Had you expected to receive comments like<br/> 13 Birdies did from Courtney?<br/> 14 A. No.<br/> 15 Q. Were you surprised to receive comments like<br/> 16 that?<br/> 17 A. We receive so many comments with people, you<br/> 18 know, saying a variety of things, nothing surprises me<br/> 19 anymore.<br/> 20 Q. Do you typically -- do you as the CEO<br/> 21 typically write the responses that you want others to<br/> 22 use in response to other comments other than this one<br/> 23 instance?<br/> 24 A. Yes.<br/> 25 Q. What other times have you done that?</p>                                                                                                                                                                                                                                                                                        | <p>1 respond. If it's a new question that, you<br/> 2 know, we hadn't heard, then we will craft<br/> 3 it together.<br/> 4 Q. (By Mr. Moore) Who was the social media<br/> 5 person at this time?<br/> 6 A. Who?<br/> 7 Q. Yes. Who?<br/> 8 A. Emily Longley.<br/> 9 Q. Okay. Were you concerned that consumers<br/> 10 were commenting on the knit Blackbird being so similar<br/> 11 to Rothy's?<br/> 12 A. I wanted to make sure that customers had the<br/> 13 accurate, right information. You know, it's not a<br/> 14 pleasant thing to read, but, you know, I wasn't<br/> 15 concerned.<br/> 16 Q. If you could look, please, at Exhibit 54.<br/> 17 Have you already reviewed it or you need a few<br/> 18 moments?<br/> 19 A. You can just point me to where you need me<br/> 20 to review.<br/> 21 Q. Okay. This is an excerpt of a Slack<br/> 22 conversation between you and Ms. Longley, the social<br/> 23 media coordinator; is that correct?<br/> 24 A. I don't remember a specific title, but she<br/> 25 was managing social media.</p>                                             |
| <p>1 A. Our customer service team and our social<br/> 2 media team are not in the merchandising and product<br/> 3 meetings. So as questions will come up with a shoe,<br/> 4 we have to arm them with, you know, how did we make<br/> 5 it, what's in it, where do we ship from, where --<br/> 6 from, did we design these. I mean, every sort of<br/> 7 questions that we would -- you know, that they would<br/> 8 not have answers to unless it comes from, you know,<br/> 9 either myself, Robyn or Marisa.<br/> 10 Q. Okay. But my question is specifically that<br/> 11 you as CEO are involved in writing responses to be<br/> 12 used for customer comments?<br/> 13 A. Once in a while. You know, it depends.<br/> 14 Q. Was this an unusual situation in which you<br/> 15 were involved in writing responses to be used to<br/> 16 customer questions, or is it something that you did<br/> 17 routinely?<br/> 18 MR. TELLEKSON: Objection, compound,<br/> 19 vague and ambiguous.<br/> 20 THE WITNESS: The social media person<br/> 21 reports directly in to me. And so we work<br/> 22 through these together. So it just -- it<br/> 23 really depends on, you know, if these are<br/> 24 similar questions that we've been getting<br/> 25 for a long time, you know, she will</p> | <p>1 Q. All right. And this is Ms. Longley, though;<br/> 2 correct? The Emily in this chat is Ms. Longley?<br/> 3 A. Yes.<br/> 4 Q. Now, do you see at the bottom of Page 2 that<br/> 5 there is a gap in time between 1:26:07 a.m. for your<br/> 6 message which reads, "Same. Thanks Emily," and on the<br/> 7 top of the next page, 5:28:20 p.m.?<br/> 8 A. Yes, I -- yes.<br/> 9 Q. Were there messages --<br/> 10 A. I don't know -- go ahead.<br/> 11 Q. Go ahead.<br/> 12 Were there messages exchanged between the<br/> 13 two of you between 1:26:07 a.m. and 5:28:20 p.m.?<br/> 14 A. I don't know.<br/> 15 Q. Do you know what time zone the timestamp --<br/> 16 A. That's what I was going to ask. I don't --<br/> 17 I don't know.<br/> 18 Q. All right.<br/> 19 MR. MOORE: Counsel, we would ask for<br/> 20 a full copy of this Slack chat because<br/> 21 there are messages missing, and we think<br/> 22 it's highly relevant. So we would ask for<br/> 23 that during the deposition, otherwise,<br/> 24 we'll have to hold it open.<br/> 25 MR. TELLEKSON: I don't agree with</p> |

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| Page 110                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 112                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>1 your characterization.</p> <p>2 MR. MOORE: Well, that's no surprise.</p> <p>3 Regardless, we're asking for the document</p> <p>4 to be provided today while we're still</p> <p>5 here.</p> <p>6 Q. (By Mr. Moore) All right. Well, on that</p> <p>7 third page of Exhibit 54, you say -- I don't know who</p> <p>8 says. Somebody says at the top there, "Hi. I think</p> <p>9 these are Birdies." And you say, "Would you mind</p> <p>10 commenting something nice" -- "nice back to her post</p> <p>11 from Birdies."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then Emily says, "Of course. One</p> <p>15 moment." And then I think that is an icon or an</p> <p>16 emoji, slightly smiling face. "Responding to many</p> <p>17 comments, hah hah."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then two more down, Emily asks -- Ms.</p> <p>21 Longley asked, "Hi Bianca. Is the following an</p> <p>22 appropriate way to address comments comparing us to</p> <p>23 Rothy's? I tried to base it off your message in the</p> <p>24 social channel." And then the next message down is a</p> <p>25 hyperlink to files.slack.com. Do you see that?</p> | <p>1 5:54:48 p.m., you say, "Hi, just saw you responded to</p> <p>2 kelseizetheday with the previous response. Can you</p> <p>3 please delete and update with the new response"; is</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And do you know who kelseizetheday</p> <p>7 is?</p> <p>8 A. No.</p> <p>9 Q. If we go over to the next page -- oh --</p> <p>10 strike that.</p> <p>11 What you're asking Ms. Longley to do is</p> <p>12 instead of using the previous language to respond to</p> <p>13 this commenter, kelseizetheday, you instead are asking</p> <p>14 her to use the revised language that you provided</p> <p>15 above; correct?</p> <p>16 A. I don't know specifically, but the</p> <p>17 initial -- the initial response I gave was</p> <p>18 specifically to Courtney, and kelseizetheday is likely</p> <p>19 a different account. And so we were not going to</p> <p>20 verbatim say, "Courtney, thank you." So we had to</p> <p>21 update it to respond to kelseizetheday.</p> <p>22 Q. Do you know what other changes you made</p> <p>23 besides just removing the name Courtney?</p> <p>24 A. I don't know.</p> <p>25 Q. All right. On the next page, a few more</p>                                                                                                                                           |
| Page 111                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 113                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 A. Yes.</p> <p>2 Q. Is that an image or a screenshot that she</p> <p>3 sent you?</p> <p>4 A. I don't know what that is, but presumably.</p> <p>5 Q. All right.</p> <p>6 MR. MOORE: Well, Counsel, again, we</p> <p>7 would request and we have requested a</p> <p>8 number of times now to be provided the</p> <p>9 native Slack that include images. So I</p> <p>10 would ask you provide that today as well so</p> <p>11 I can question this witness about it.</p> <p>12 Do you agree?</p> <p>13 MR. TELLEKSON: I'm not going to</p> <p>14 respond on the fly. We -- we've -- a</p> <p>15 record of these discussions is copious. So</p> <p>16 I don't have anything to add right now.</p> <p>17 MR. MOORE: All right. Well, we will</p> <p>18 hold the deposition open if we're not able</p> <p>19 to question this witness about it.</p> <p>20 Q. (By Mr. Moore) All right. In any event,</p> <p>21 the next response down, Ms. Gates, you say, "Thanks.</p> <p>22 I'd reword it a bit. I'd say," and then you include</p> <p>23 your quote, proposed response; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then further down a few more messages at</p>                                    | <p>1 exchanges down, you wrote, at a timestamp of</p> <p>2 6:26:01 p.m., "Hi, I think this needs to be edited.</p> <p>3 Do you know if she's a customer? If not, I'd remove</p> <p>4 the first line. That line was for the other person</p> <p>5 who said she's a customer," and then you include what</p> <p>6 appears to be a link to an image; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And so are you asking Ms. Longley to revise</p> <p>9 another response to a customer comment?</p> <p>10 A. Again, I don't know if this is a customer.</p> <p>11 In the initial response I gave, it says, "Courtney,</p> <p>12 thank you for being a valued customer." So we cannot</p> <p>13 be using that language if we don't know if, in fact,</p> <p>14 this person is a customer. So I'm asking her if</p> <p>15 she -- if this person is a customer or not.</p> <p>16 Q. And you are giving suggestions for how to</p> <p>17 edit the response if the person is not a customer;</p> <p>18 correct?</p> <p>19 A. Well, we would not say, "Thank you for being</p> <p>20 a valued customer" if she's not a customer, so yes.</p> <p>21 Q. All right. And do you know what image you</p> <p>22 sent at 6:26:08 p.m.?</p> <p>23 A. I don't.</p> <p>24 Q. Do you know if -- well, strike that.</p> <p>25 All right. And then a few more chats down,</p> |



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| <p style="text-align: right;">Page 118</p> <p>1 2.0 that is included in Exhibit 53, which is your</p> <p>2 Slack message; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And so -- and you're welcome to compare the</p> <p>5 wording to confirm it, but the response that Birdies</p> <p>6 provided to Courtney Woodard Lewis is the same</p> <p>7 language that you wrote in Exhibit 53 that you wanted</p> <p>8 to be used; correct?</p> <p>9 A. Yes.</p> <p>10 Q. Now, do you see that the previous two</p> <p>11 responses also have responses from Birdies' customer</p> <p>12 service?</p> <p>13 A. Yes.</p> <p>14 Q. Did you write the language to be used in</p> <p>15 either of those responses?</p> <p>16 A. This is pre-existing responses, language. I</p> <p>17 wouldn't have had to write this because this was</p> <p>18 already written a long time ago.</p> <p>19 Q. But on the day of the knit Blackbird launch,</p> <p>20 you had to write language to be used to respond to</p> <p>21 consumers like Courtney who called the knit Blackbird</p> <p>22 Rothy's 2.0; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Do you see that her comment has five</p> <p>25 reactions, including at least one like and at least</p> | <p style="text-align: right;">Page 120</p> <p>1 A. Yes.</p> <p>2 Q. And you understand by that, of course, that</p> <p>3 she's referring to Rothy's?</p> <p>4 A. I don't know what she was referring to.</p> <p>5 Q. Well, I mean, it would have to be Rothy's;</p> <p>6 right?</p> <p>7 MR. TELLEKSON: Objection, asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 MR. TELLEKSON: Calls for speculation.</p> <p>11 Q. (By Mr. Moore) So your testimony is it</p> <p>12 could be someone besides Rothy's?</p> <p>13 A. My testimony is I don't know this person or</p> <p>14 what she was referring to when she was commenting.</p> <p>15 Q. Did anyone -- well, strike that.</p> <p>16 When the knit Blackbird was released, of all</p> <p>17 the customer service and social media comments, did</p> <p>18 anyone say that the knit Blackbird looked like any</p> <p>19 other type of shoe besides Rothy's?</p> <p>20 A. No.</p> <p>21 Q. Did you write the language used to respond</p> <p>22 to Lisa Ann Wood Johnson as well?</p> <p>23 A. I don't recall.</p> <p>24 Q. If you could please look next at Exhibit 23,</p> <p>25 which is probably further up on the folder, and just</p> |
| <p style="text-align: right;">Page 119</p> <p>1 one laughing face?</p> <p>2 A. Yes.</p> <p>3 Q. Now, if you scroll down to the next comment,</p> <p>4 do you see that it's from a Facebook username Chen</p> <p>5 Marie?</p> <p>6 A. Yes.</p> <p>7 Q. And Chen Marie writes, "I love this brand,</p> <p>8 but I feel like this is just like Rothy's"; correct?</p> <p>9 A. Yes.</p> <p>10 Q. So two comments in a row on this Facebook</p> <p>11 post say that the knit Blackbird looks like Rothy's</p> <p>12 shoes; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And Birdies provides a response to this as</p> <p>15 well. Do you see that?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. Is that language that you wrote as well?</p> <p>18 A. I don't recall if I wrote this or not.</p> <p>19 Q. If you could go down a few more comments to</p> <p>20 an individual named Lisa Ann Wood Johnson. Do you see</p> <p>21 that?</p> <p>22 A. Yes.</p> <p>23 Q. And she writes, "Hmm copying another popular</p> <p>24 shoe brand I see," along with an emoji that looks like</p> <p>25 somebody scratching their chin; correct?</p>                                                                                                   | <p style="text-align: right;">Page 121</p> <p>1 let me know when you've had a chance to look at that.</p> <p>2 A. Okay.</p> <p>3 Q. All right. Now, this is an Instagram post</p> <p>4 by Birdies concerning the knit Blackbird shoe;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And there are also a number of comments that</p> <p>8 Instagram users have made to this post as well; is</p> <p>9 that right?</p> <p>10 A. Yes. I see 1,737 likes and a lot of</p> <p>11 positive comments here. Yes.</p> <p>12 Q. You said you see a lot of positive comments?</p> <p>13 A. I do.</p> <p>14 Q. And you also see some negative comments too;</p> <p>15 right?</p> <p>16 A. I'm still scrolling, so I'll -- I don't see</p> <p>17 any yet.</p> <p>18 Q. Okay. Well, I'm happy -- again, you're</p> <p>19 always welcome to read what you'd like to read, but</p> <p>20 I'm happy to point you to what I'd like to ask you</p> <p>21 about if that would be --</p> <p>22 A. Yes, that would be great.</p> <p>23 Q. All right. If you could go, please, to the</p> <p>24 page at the bottom right that says ROTHYS2702.</p> <p>25 A. At the bottom right. When you say the</p>                                       |

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| <p>1 right?</p> <p>2 A. Yes. Our response got four likes.</p> <p>3 MR. MOORE: Once again, motion to</p> <p>4 strike, nonresponsive.</p> <p>5 Q. (By Mr. Moore) Ms. Gates, kelseizetheday's</p> <p>6 comments got 11 likes; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And lyss_789's reply to that comment got</p> <p>9 four likes; right?</p> <p>10 A. Yes.</p> <p>11 Q. Do you still have Exhibit 54 before you,</p> <p>12 which is the Slack chat?</p> <p>13 A. No, but I can pull it up.</p> <p>14 Okay.</p> <p>15 Q. Do you see at the very first page there</p> <p>16 where it says, "Case time zone (UTC) Coordinated</p> <p>17 Universal Time"?</p> <p>18 A. Yes.</p> <p>19 Q. All right. So that tells us that the time</p> <p>20 zone of the timestamp is UTC; correct?</p> <p>21 A. Yes.</p> <p>22 MR. MOORE: Okay. I've got a few more</p> <p>23 exhibits, but what is your preference,</p> <p>24 David, in terms of our timing? Would you</p> <p>25 like me to continue or take our lunch</p>                                                                                | <p>1 Q. It starts out with Sean making a comment.</p> <p>2 And who is Sean?</p> <p>3 A. Sean is our VP of finance.</p> <p>4 Q. And Sean -- what's his last name?</p> <p>5 A. Scanlan.</p> <p>6 Q. Mr. Scanlan says, "Instagram user</p> <p>7 @rothysmommy likes these washable Blackbirds," with a</p> <p>8 crying laughing face; right?</p> <p>9 A. Yes.</p> <p>10 Q. And then Patrice responds. Who is Patrice?</p> <p>11 A. She works in customer service.</p> <p>12 Q. And was her last name?</p> <p>13 A. I -- I don't know.</p> <p>14 Q. She says, "I'm pretty sure I'm messaging her</p> <p>15 now. She's asking a lot about Rothy's and that they</p> <p>16 just launched a collection too"; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And then you then respond to Patrice;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. And are you giving Patrice the same talking</p> <p>22 points that you gave to Ms. Longley and others to</p> <p>23 respond to consumers asking about the knit Blackbird?</p> <p>24 A. Yes.</p> <p>25 Q. And you say that you're doing this because,</p>                                          |
| <p>1 break?</p> <p>2 MR. TELLEKSON: How about another</p> <p>3 five, ten minutes?</p> <p>4 THE WITNESS: Sure.</p> <p>5 MR. MOORE: Y'all want to break at</p> <p>6 1:00?</p> <p>7 MR. TELLEKSON: Sure.</p> <p>8 MR. MOORE: Let's do that.</p> <p>9 Q. (By Mr. Moore) All right. If you could,</p> <p>10 then, please go next to -- let's see. I wrote one</p> <p>11 off. That means I have moved. I think we can skip</p> <p>12 55. Let's -- if you could please pull up 56.</p> <p>13 Hang on. While you're doing that, please</p> <p>14 pull up Exhibit 56, which is BIRDIES_00061343. Let me</p> <p>15 know when you've had a chance to take a look. And</p> <p>16 I'll be right back.</p> <p>17 (Plaintiff's Exhibit 56 was marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q. (By Mr. Moore) This Exhibit 56 is another</p> <p>21 excerpt of a Slack chat within Birdies; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And this is, again, on the launch day of the</p> <p>24 knit Blackbird, February 9th, 2021; correct?</p> <p>25 A. Correct.</p> | <p>1 "I don't want people to think we are copying or going</p> <p>2 after Rothy's. We design based on feedback from</p> <p>3 customers"; right?</p> <p>4 A. Yes.</p> <p>5 Q. All right. Do you see below there,</p> <p>6 there's -- well, who is Brooke Curran, who makes the</p> <p>7 next comment?</p> <p>8 A. Brooke runs our special impact.</p> <p>9 Q. And she includes a link and a picture from</p> <p>10 an Instagram posting; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know what image or link that she</p> <p>13 provided there?</p> <p>14 A. No.</p> <p>15 MR. MOORE: Counsel, we'd again ask</p> <p>16 for Slacks with images. So we would like</p> <p>17 today so we can ask this witness about the</p> <p>18 full copy of this Slack that includes the</p> <p>19 image, or we'll have to hold it open.</p> <p>20 Q. (By Mr. Moore) All right. Let's -- if you</p> <p>21 could please pull up Exhibit 57, which is</p> <p>22 BIRDIES_00077289 through 293. Please let me know when</p> <p>23 you've had a chance to review that.</p> <p>24 (Plaintiff's Exhibit 57 was marked for</p> <p>25 identification.)</p> |

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| <p>1 THE WITNESS: Okay.</p> <p>2 Q. (By Mr. Moore) This is -- or I should say</p> <p>3 this exhibit, Exhibit 57, this is the -- this includes</p> <p>4 the same Slack messages that we just looked at in</p> <p>5 Exhibit 56; is that correct?</p> <p>6 A. I can't recall specifically, but...</p> <p>7 Q. All right. Well, if you could look at the</p> <p>8 third page -- sorry -- fourth page. It has a number</p> <p>9 in the bottom right of 77292. Do you see the message</p> <p>10 from Mr. Scanlan that refers to the Instagram user</p> <p>11 rothysmommy?</p> <p>12 A. Sorry, can you point me to the page number</p> <p>13 again? I'm getting a different page number and bottom</p> <p>14 right-hand number.</p> <p>15 Q. What number do you have for Exhibit 57?</p> <p>16 A. 7229.</p> <p>17 Q. Oh, I have -- that's strange. I have in the</p> <p>18 file share that it's 77289.</p> <p>19 MR. MOORE: Did we get them switched?</p> <p>20 Okay.</p> <p>21 THE WITNESS: Oh, sorry. Let me --</p> <p>22 Q. (By Mr. Moore) I think that's been</p> <p>23 reversed.</p> <p>24 A. Okay. Let's go back. I'm looking at</p> <p>25 Exhibit 57; is that correct?</p> | <p>1 Q. All right. All right. Then I think if you</p> <p>2 would please look at Exhibit 58, which is BIRDIES 7 --</p> <p>3 00077229 through 77237. It's a bit lengthier Slack</p> <p>4 exchange, but I will tell you -- and as always, you're</p> <p>5 welcome to look at what you'd like, but I will tell</p> <p>6 you I'm going to ask you only about the first page.</p> <p>7 A. Okay.</p> <p>8 Q. So just let me know when you're ready,</p> <p>9 please.</p> <p>10 A. Okay.</p> <p>11 Q. This is a Slack channel including messages</p> <p>12 between you and Danielle. Please remind me who</p> <p>13 Danielle is.</p> <p>14 A. Well, Danielle runs social media for us now</p> <p>15 because Emily is no longer here. But at the time, I</p> <p>16 don't know what -- she might have been customer</p> <p>17 service.</p> <p>18 Q. What is her last name?</p> <p>19 A. Murphy.</p> <p>20 Q. She wrote you and said, "Hi B. I'm working</p> <p>21 with Emily right now on a variety of responses for</p> <p>22 negative comments, mainly about copying Rothy's";</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then she explained what she was doing</p> |
| <p>1 Q. Yes. Why don't we -- to make this quicker,</p> <p>2 why don't -- if you could please pull up 57 and 58,</p> <p>3 and we'll figure out which is which, and I'll ask you</p> <p>4 about both of them.</p> <p>5 A. Okay. You know what, when I download 57, it</p> <p>6 downloads at 58.</p> <p>7 Q. We used to just hand paper across the table.</p> <p>8 A. I know.</p> <p>9 Okay.</p> <p>10 Q. So which one are you looking at now, Ms.</p> <p>11 Gates?</p> <p>12 A. 57. It's 77289.</p> <p>13 Q. Perfect. Sorry for that confusion, but</p> <p>14 that's where I hope to be.</p> <p>15 All right. So -- and if you need more time,</p> <p>16 please take it, but what I want to ask you about is on</p> <p>17 Page 4.</p> <p>18 A. Okay. Yes.</p> <p>19 Q. Are these the same messages that we looked</p> <p>20 at in Exhibit 56 just a moment ago?</p> <p>21 A. They appear to be, yes.</p> <p>22 Q. All right. And we can't tell from this</p> <p>23 version of the same Slack chat what image Brooke had</p> <p>24 provided?</p> <p>25 A. No.</p>                                                                                                             | <p>1 there. And then you responded, "Wonderful and agree.</p> <p>2 Thank you D."</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And if I'm doing my time zone</p> <p>6 conversion right, this is in the morning of the day of</p> <p>7 launch of the knit Blackbird; correct?</p> <p>8 A. I don't know what UCT time is, so it's hard</p> <p>9 for me to do the math.</p> <p>10 Q. Right. All right. Well, that can be</p> <p>11 determined; right?</p> <p>12 A. Yes.</p> <p>13 Q. All right. In any event, it was on the day</p> <p>14 of launch; correct?</p> <p>15 A. Yes.</p> <p>16 Q. All right.</p> <p>17 MR. MOORE: Should we take our -- go</p> <p>18 off the record and take our lunch break?</p> <p>19 MR. TELLEKSON: Yeah, that sounds</p> <p>20 good. How about 30 minutes?</p> <p>21 MR. MOORE: Sure. Let's go off the</p> <p>22 record.</p> <p>23 VIDEOGRAPHER: The time is 10 -- the</p> <p>24 time is 1:03 p.m. We're now off the</p> <p>25 record.</p>                                                                                                                                                                                     |

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 speculation, improper hypothetical.</p> <p>2 THE WITNESS: I don't know if I've</p> <p>3 seen two exactly the same silhouettes.</p> <p>4 Each silhouette has a slightly different</p> <p>5 version than the other. I mean, maybe. I</p> <p>6 don't know. I know Birdies has its own</p> <p>7 unique design.</p> <p>8 Q. (By Mr. Moore) Is it possible that two</p> <p>9 shoes could have generally the same silhouette and yet</p> <p>10 be very different designs?</p> <p>11 MR. TELLEKSON: Objection, calls for</p> <p>12 speculation, vague and ambiguous.</p> <p>13 THE WITNESS: Can you repeat the</p> <p>14 question?</p> <p>15 MR. MOORE: Please read it back.</p> <p>16 (The record was read by the reporter</p> <p>17 as requested.)</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. (By Mr. Moore) And the knit Blackbird is</p> <p>20 not exactly the same as the calf hair Blackbird;</p> <p>21 right?</p> <p>22 MR. TELLEKSON: Objection, asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: The Blackbird we</p> <p>25 launched in 2015 is the same shoe we still</p> | <p>1 release?</p> <p>2 A. I don't recall.</p> <p>3 Q. If you'd go to -- the next exhibit I'd like</p> <p>4 to go to is Exhibit 5. It's probably up towards the</p> <p>5 top of the folder.</p> <p>6 I'm incorrect. I apologize. I meant to --</p> <p>7 I meant to --</p> <p>8 MR. MOORE: Could we please upload</p> <p>9 Exhibit 4 instead.</p> <p>10 Q. (By Mr. Moore) Let's go ahead to the next</p> <p>11 one while that's happening. I actually don't want to</p> <p>12 ask you -- I don't think I want to ask you about</p> <p>13 Exhibit 5. So it's -- while the next one is</p> <p>14 uploading, if you could please pull up Exhibit 62,</p> <p>15 which is Bates number BIRDIES_00072219.</p> <p>16 Please just let me know when you've had a</p> <p>17 chance to look at that. The Bates number is 72219</p> <p>18 through 77221.</p> <p>19 (Plaintiff's Exhibit 62 was marked for</p> <p>20 identification.)</p> <p>21 THE WITNESS: Okay.</p> <p>22 Q. (By Mr. Moore) This is excerpts from a</p> <p>23 Slack chat between you and -- is it Ms. Nasser?</p> <p>24 A. Yes.</p> <p>25 Q. All right. And it's from January of 2021;</p>                                                    |
| <p>1 call the Blackbird today.</p> <p>2 MR. MOORE: Motion to strike,</p> <p>3 nonresponsive.</p> <p>4 Q. (By Mr. Moore) The calf hair Blackbird and</p> <p>5 the knit Blackbird are not exactly the same; correct?</p> <p>6 MR. TELLEKSON: Objection, asked and</p> <p>7 answered.</p> <p>8 THE WITNESS: They are the same shoe,</p> <p>9 different material.</p> <p>10 Q. (By Mr. Moore) Right. And so because they</p> <p>11 have different material, they are not exactly the</p> <p>12 same; right?</p> <p>13 A. That is correct.</p> <p>14 Q. The calf hair Blackbird has an upper made of</p> <p>15 animal skin with hair on it; right?</p> <p>16 A. Yes.</p> <p>17 Q. And the knit Blackbird has an upper made of</p> <p>18 a vegan material, so not animal skin, that is knit</p> <p>19 together; right?</p> <p>20 A. Yes.</p> <p>21 Q. And the knit Blackbird does not have animal</p> <p>22 hair on it; right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Did any other Birdies investors</p> <p>25 contact you or Ms. Sharkey about the knit Blackbird</p>                | <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. This is perhaps a couple of weeks before the</p> <p>4 launch of the knit Blackbird; correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And is Ms. Nasser discussing filming</p> <p>7 a video of the knit Blackbird for purposes of the</p> <p>8 release?</p> <p>9 A. Yes.</p> <p>10 Q. And what she says there is, "Morning. About</p> <p>11 to start filming the video after setting up and prep.</p> <p>12 FYI, we won't be showing the twist of the shoe a la</p> <p>13 Rothy's and" -- "a la Rothy's as after playing around,</p> <p>14 this shoe doesn't actually twist like that. I also</p> <p>15 think this movement is ownable to Rothy's too. It</p> <p>16 does bend in half but this creates a deep crease that</p> <p>17 can't be reversed."</p> <p>18 Do you understand what she's saying there?</p> <p>19 A. Yes.</p> <p>20 Q. What is she saying?</p> <p>21 A. She's saying that -- she's planning on</p> <p>22 showing how easy our shoe is to get on the foot, and</p> <p>23 focus on washability. And she's also pointing out</p> <p>24 that the twisting movement is ownable to Rothy's, and</p> <p>25 let's just not do that.</p> |



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| <p>1 Q. Well, what does she mean by "the twist of</p> <p>2 the shoe a la Rothy's"?</p> <p>3 A. I don't know specifically. I was not on the</p> <p>4 set and she was the creative director. But, I mean,</p> <p>5 it's clear that she's not -- she's identifying that</p> <p>6 something appears more like what Rothy's would do, so</p> <p>7 we're not going to do that and we're going to focus on</p> <p>8 the washability of our shoe.</p> <p>9 Q. Well, isn't she saying that the knit</p> <p>10 Blackbird actually doesn't twist like that?</p> <p>11 A. Correct.</p> <p>12 Q. So doesn't that suggest that she tried to</p> <p>13 twist it a la Rothy's?</p> <p>14 A. She might have. But we -- you know, again,</p> <p>15 this is our shoe. Our Blackbird. Our Blackbird does</p> <p>16 not twist. It never has.</p> <p>17 Q. And when you say twist, what does that mean?</p> <p>18 A. I think just, you know, twisting it around.</p> <p>19 But our Blackbird silhouette has always been, you</p> <p>20 know, stiffer, more firm.</p> <p>21 Q. And she said -- doesn't she say that when</p> <p>22 she does try to twist it a la Rothy's, it creates a</p> <p>23 deep crease that can't be reversed?</p> <p>24 A. Yes.</p> <p>25 Q. Now, this Slack chat has, I think, four</p> | <p>1 that you're discussing how you and Ms. Sharkey had</p> <p>2 each invested your own money in the company at the</p> <p>3 beginning in order to make the first batch of shoes</p> <p>4 that the company sold?</p> <p>5 A. Yes.</p> <p>6 Q. And that first batch included the calf hair</p> <p>7 Blackbird; correct?</p> <p>8 A. Correct.</p> <p>9 Q. All right. And the very bottom of the page,</p> <p>10 above your pictures, do you see the article says,</p> <p>11 "What did they get for their money? Shoes that today</p> <p>12 give them both, quote, PTSD, jokes Gates."</p> <p>13 What shoes were you talking about that gave</p> <p>14 you and Ms. Sharkey PTSD?</p> <p>15 A. Just all of the back-and-forth design and</p> <p>16 manufacturing of the shoes. Our manufacturing</p> <p>17 partners had a difficult time executing the first two</p> <p>18 times.</p> <p>19 Q. Was that true for the calf hair Blackbird as</p> <p>20 well?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And if we'd skip over to Page 4.</p> <p>23 I think it's three paragraphs up from the end of the</p> <p>24 article. Do you see there's a sentence that begins,</p> <p>25 "Yet the biggest hurdles to overcome"?</p> |
| <p>1 images or other files that are embedded in it;</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know what those are?</p> <p>5 A. I think she's just sending me some -- the</p> <p>6 raw footage of the shoot.</p> <p>7 MR. MOORE: Counsel, we would ask for</p> <p>8 the full copy of this Slack chat with these</p> <p>9 images in them today so that we can ask</p> <p>10 this witness about it, otherwise, we'll</p> <p>11 hold the deposition open.</p> <p>12 Q. (By Mr. Moore) All right. We can move on</p> <p>13 to -- I think Exhibit 4 should be available to you in</p> <p>14 the folder. If you'd please pull that up and let me</p> <p>15 know when you've had a chance to look at it.</p> <p>16 A. Okay.</p> <p>17 Q. Exhibit 4, this is a TechCrunch article</p> <p>18 about Birdies; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you are -- were interviewed for this</p> <p>21 article?</p> <p>22 A. Correct.</p> <p>23 Q. All right. I want to ask you about a</p> <p>24 statement -- or quote that you gave on Page 2 at the</p> <p>25 bottom -- towards the bottom of the page. Do you see</p>                                                                                                                                                          | <p>1 A. Yep.</p> <p>2 Q. And it says there, "Yet the biggest hurdle</p> <p>3 to overcome may eventually involve copycats." Then</p> <p>4 there's a reference to Rothy's filing a patent</p> <p>5 infringement suit against a rival. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know which suit that refers to?</p> <p>8 A. I do not.</p> <p>9 Q. Okay. And then the next paragraph</p> <p>10 indicates, "Asked about this, Gates doesn't seem</p> <p>11 terribly concerned, not yet." And then there's a</p> <p>12 quote from you that reads, "We've had friends tell us</p> <p>13 that Target is offering a similar slipper at a</p> <p>14 different price point. Everybody copies everybody,</p> <p>15 she says."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And that's a quote that you gave to</p> <p>19 TechCrunch for this article?</p> <p>20 A. As part of a bigger conversation, yes.</p> <p>21 Q. All right. And when you said "everybody</p> <p>22 copies everybody," are you referring to the footwear</p> <p>23 industry?</p> <p>24 A. I'm referring to -- I mean, just in general.</p> <p>25 People copy people.</p>                                                           |

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| <p>1 Q. Okay. Well, you also said, "Game on";</p> <p>2 right?</p> <p>3 A. I did.</p> <p>4 Q. What game was going to be on?</p> <p>5 A. That I was going to defend myself in that</p> <p>6 the Blackbird that they were questioning is our</p> <p>7 original Blackbird which predates, you know, the</p> <p>8 loafer that they were referring to.</p> <p>9 Q. The calf hair, you mean.</p> <p>10 A. Correct.</p> <p>11 Q. All right. Now I think we can go to the</p> <p>12 next document, 64. Exhibit 64 is Bates number</p> <p>13 BIRDIES_00069994 through 699 -- I'm sorry -- through</p> <p>14 70003.</p> <p>15 (Plaintiff's Exhibit 64 was marked for</p> <p>16 identification.)</p> <p>17 THE WITNESS: Okay.</p> <p>18 Q. (By Mr. Moore) This is a series of e-mails</p> <p>19 between you and a few other people at Birdies. This</p> <p>20 also begins with a forwarded Rothy's ad; correct?</p> <p>21 A. I believe this is the same ad that Priti had</p> <p>22 sent to me.</p> <p>23 Q. Right. And you responded to the e-mail by</p> <p>24 saying, "Copying our marketing since 2016"; right?</p> <p>25 A. Yes.</p> | <p>1 were -- we had already been using.</p> <p>2 Q. But you understand that Rothy's has</p> <p>3 protectable rights in the design patents that it is</p> <p>4 asserting in this case; right?</p> <p>5 A. Yes.</p> <p>6 MR. TELLEKSON: Objection, assumes a</p> <p>7 fact not in evidence.</p> <p>8 Q. (By Mr. Moore) I understand you don't agree</p> <p>9 with the claim, but I'm just asking if you understand</p> <p>10 that Rothy's actually has received design patents from</p> <p>11 the United States Government, and that's what's the</p> <p>12 claims it's asserting in this case; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Now, do you also understand that even if</p> <p>15 Birdies didn't copy or didn't intend to copy Rothy's,</p> <p>16 that it can nonetheless be found to infringe Rothy's'</p> <p>17 patents?</p> <p>18 MR. TELLEKSON: Objection, calls for a</p> <p>19 legal conclusion, calls for speculation.</p> <p>20 THE WITNESS: Yeah, I'm not a lawyer.</p> <p>21 I don't know. All I can tell you is that</p> <p>22 our shoe predates theirs, and we have had</p> <p>23 the same shoe since 2015.</p> <p>24 Q. (By Mr. Moore) I'm not asking you to give</p> <p>25 legal advice, Ms. Gates. I'm just asking if you have</p> |
| Page 163                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 165                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 Q. And you meant there that Rothy's had been</p> <p>2 copying Birdies's marketing since 2016?</p> <p>3 A. Yes.</p> <p>4 Q. Other than the word "slippers," what else</p> <p>5 had -- in your view, had Rothy's done to copy Birdies'</p> <p>6 marketing since that time?</p> <p>7 A. As it says here in the reference to</p> <p>8 cloud-like comfort.</p> <p>9 Q. Is that Birdies had used the phrase</p> <p>10 "cloud-like comfort"?</p> <p>11 A. Yes.</p> <p>12 Q. That precise phrase?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did Birdies have any protectable</p> <p>15 rights in that phrase?</p> <p>16 A. No.</p> <p>17 Q. Any other aspects of Birdies' marketing that</p> <p>18 you felt that Rothy's had copied since 2016?</p> <p>19 A. I don't recall.</p> <p>20 Q. The very top, you -- after some further</p> <p>21 responses internally, you say, "The irony of it all is</p> <p>22 unbelievable." What did you mean there?</p> <p>23 A. That they're suing us because they're</p> <p>24 claiming that we copied them, which we did not, and,</p> <p>25 you know, here they are using messaging that we</p>  | <p>1 an understanding that --</p> <p>2 A. You're asking me about legal -- legal stuff.</p> <p>3 I can't tell you.</p> <p>4 Q. Let me finish my question, please.</p> <p>5 I'm just asking if you have an understanding</p> <p>6 that even if Birdies didn't intend to copy Rothy's,</p> <p>7 there nonetheless could be a finding by a jury of</p> <p>8 patent infringement in this case?</p> <p>9 MR. TELLEKSON: Same objection.</p> <p>10 Q. (By Mr. Moore) Do you have that</p> <p>11 understanding?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. All right. Let's -- you may need to</p> <p>14 refresh because we may have tweaked some of the</p> <p>15 exhibits, but if you could please refresh, I'd like to</p> <p>16 go to the next exhibit, which is 65. And that is a</p> <p>17 document Bates-numbered BIRDIES_00061342.</p> <p>18 Please just let me know when you've got it</p> <p>19 and have taken a look.</p> <p>20 (Plaintiff's Exhibit 65 was marked for</p> <p>21 identification.)</p> <p>22 THE WITNESS: I have it.</p> <p>23 Q. (By Mr. Moore) Okay. This is another</p> <p>24 excerpt of a Slack conversation within Birdies;</p> <p>25 correct?</p>                                                                                          |



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| <p>1 A. Yes.</p> <p>2 Q. And it starts with an individual named Megan</p> <p>3 Steele saying, "I saw this and literally thought it</p> <p>4 was us." Who is Megan Steele?</p> <p>5 A. She runs our store.</p> <p>6 Q. And what is she referring to?</p> <p>7 A. I -- I don't know.</p> <p>8 Q. We don't know because your counsel hasn't</p> <p>9 provided us the full chat; right?</p> <p>10 MR. TELLEKSON: Objection,</p> <p>11 argumentative, incorrect.</p> <p>12 MR. MOORE: Well, Counsel, I'm glad</p> <p>13 for you to tell me where it is. This is --</p> <p>14 I'll add this to the list of the full chats</p> <p>15 we want, or I'll hold the deposition open.</p> <p>16 Q. (By Mr. Moore) So neither of us has any</p> <p>17 idea, correct, Ms. Gates, of what's being referred to</p> <p>18 here?</p> <p>19 A. Correct.</p> <p>20 Q. You then comment, "I'm restraining myself</p> <p>21 from commenting #resisttheurge."</p> <p>22 What did you mean?</p> <p>23 A. I don't know.</p> <p>24 Q. And then Danielle writes, "Wow Rothy's. Way</p> <p>25 to make a stab."</p>                              | <p>1 look at it. The document is Bates No.</p> <p>2 BIRDIES_00065821.</p> <p>3 (Plaintiff's Exhibit 66 was marked for</p> <p>4 identification.)</p> <p>5 THE WITNESS: Okay.</p> <p>6 Q. (By Mr. Moore) All right. This is an</p> <p>7 e-mail between you and Ms. Sharkey; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And it's from 2015?</p> <p>10 A. Yes.</p> <p>11 Q. Your e-mail says, "Looks like they may be</p> <p>12 competing with Tieks. They just launched today," and</p> <p>13 then you have a link to the Rothy's website; right?</p> <p>14 A. Yes.</p> <p>15 Q. What is Tieks?</p> <p>16 A. It's another ballet flat shoe company that's</p> <p>17 digitally native, online only.</p> <p>18 Q. Do they use a knit upper?</p> <p>19 A. No.</p> <p>20 Q. Why did you think Rothy's was competing with</p> <p>21 Tieks?</p> <p>22 A. Well, it was a foldable, bendable flat like</p> <p>23 Tieks.</p> <p>24 Q. And Ms. Sharkey says, "Where did you hear</p> <p>25 about them? Super strange concept"; correct?</p>                                                                           |
| <p>1 Do you know what she means there?</p> <p>2 A. No.</p> <p>3 Q. And then a little bit further down, you say,</p> <p>4 "@conning we were first #copycats."</p> <p>5 What did you mean?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you calling Rothy's copycats?</p> <p>8 A. I don't know what this is in reference to.</p> <p>9 Q. You see the date is March 25th, 2020?</p> <p>10 A. Yes.</p> <p>11 Q. And then below conning writes, "I know.</p> <p>12 They are known for The Pointys." Is that referring to</p> <p>13 Rothy's?</p> <p>14 A. Again, I don't know. I'd have to speculate.</p> <p>15 Q. Okay. So you don't know if you were calling</p> <p>16 Rothy's a copycat in March of 2020?</p> <p>17 A. I don't know.</p> <p>18 MR. MOORE: Counsel, again, I'd ask</p> <p>19 for the full chat here. Obviously we're</p> <p>20 not able to do meaningful questioning</p> <p>21 without it.</p> <p>22 Let's go to the next exhibit, then,</p> <p>23 which is 66. And it is a document -- if</p> <p>24 you'd please pull that up, just let me know</p> <p>25 when you have it and have had a chance to</p> | <p>1 A. Yes.</p> <p>2 Q. Does that indicate that it's not something</p> <p>3 that she had seen before?</p> <p>4 A. No. I don't know what she was referring to</p> <p>5 as the concept.</p> <p>6 Q. What did you think about the Rothy's concept</p> <p>7 when you saw it in December of 2015?</p> <p>8 A. I don't remember. That was many years ago.</p> <p>9 Q. You asked Ms. Sharkey to check out Rothy's</p> <p>10 at that time; correct?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Let's continue the next exhibit,</p> <p>13 No. 67. Bates No. BIRDIES_00065827 through 65828.</p> <p>14 Just let me know when you have that and have had a</p> <p>15 chance to look, please.</p> <p>16 (Plaintiff's Exhibit 67 was marked for</p> <p>17 identification.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 Q. (By Mr. Moore) This is an e-mail from</p> <p>20 April 2016, an e-mail exchange that you are on;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it's with somebody named Brigid Parr</p> <p>24 with Zapwater. Who was that?</p> <p>25 A. Brigid was at -- Zapwater is our PR agency.</p> |

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| <p>1 asks Birdies to stop selling the knit Blackbird?</p> <p>2 A. I would have to read it again to know</p> <p>3 exactly what it says.</p> <p>4 Q. All right. Well, let me help you with that.</p> <p>5 Do you see the third paragraph that reads -- that</p> <p>6 begins by reading, "While we outline below the legal</p> <p>7 bases for our demand that Birdies cease and desist the</p> <p>8 sale of its knit loafer"?</p> <p>9 A. Uh-huh (affirmative).</p> <p>10 Q. Okay. And do you see on Page 4 in the</p> <p>11 second paragraph where the letter says, "Accordingly,</p> <p>12 we demand that Birdies immediately and permanently</p> <p>13 discontinue all advertising, promotion or sale of the</p> <p>14 infringing product"?</p> <p>15 A. Uh-huh (affirmative).</p> <p>16 Q. All right. Now, I take it Birdies has not</p> <p>17 stopped selling the -- or stopped advertising,</p> <p>18 promoting or selling the knit Blackbird as a result of</p> <p>19 this letter; is that right?</p> <p>20 A. Well, we did not stop advertising, promotion</p> <p>21 or sale of the -- of an infringing product, but our</p> <p>22 Blackbird does not infringe.</p> <p>23 Q. Okay. Let me try to ask this again. After</p> <p>24 receiving -- after receiving Exhibit 76, the cease and</p> <p>25 desist letter, Birdies did not stop advertising,</p> | <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 Q. All right.</p> <p>13 If you could go to the next exhibit, please,</p> <p>14 which is -- should be on the share site. Let me know</p> <p>15 when you have it, please.</p> <p>16 (Plaintiff's Exhibit 77 was marked for</p> <p>17 identification.)</p> <p>18 THE WITNESS: Which exhibit is it?</p> <p>19 Q. (By Mr. Moore) Sorry. I should say. It's</p> <p>20 Exhibit 77?</p> <p>21 MR. MOORE: And the Bates number, for</p> <p>22 the record, is BIRDIES_00066574 through</p> <p>23 66580.</p> <p>24 THE WITNESS: Okay.</p> <p>25 Q. (By Mr. Moore) This is an e-mail from Ms.</p>                                                                                                                                                                                                                                                                                              |
| Page 199                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 201                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 promoting or selling the knit Blackbird; correct?</p> <p>2 A. Correct.</p> <p>3 Q. All right. Have you ever reviewed any of</p> <p>4 the patents that Rothy's is asserting in this lawsuit?</p> <p>5 A. Only after they sent us the patent.</p> <p>6 Q. After you received this letter?</p> <p>7 A. Yep.</p> <p>8 Q. And did you review the patents at that time?</p> <p>9 A. I -- I reviewed this -- yes.</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>1 Grillo to you attaching -- with the subject "Rothy's</p> <p>2 photos" from May of 2018; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And is this the first e-mail in the chain</p> <p>5 that we looked at earlier as Exhibit 70?</p> <p>6 A. It appears to be so.</p> <p>7 Q. Okay. And do you see the photos that she</p> <p>8 attached?</p> <p>9 A. Yes.</p> <p>10 Q. And those are photos of the wall in Rothy's'</p> <p>11 store; correct?</p> <p>12 A. They appear to be, yes.</p> <p>13 Q. Is that -- do you know whether that's the</p> <p>14 store in San Francisco?</p> <p>15 A. I'm not sure, but in looking at the shoes,</p> <p>16 it says, "Heart SF" on one of them, so I would imagine</p> <p>17 that's the San Francisco store.</p> <p>18 Q. Okay. All right. If you could please</p> <p>19 download Exhibit 78. Just let me know when you have</p> <p>20 that.</p> <p>21 (Plaintiff's Exhibit 78 was marked for</p> <p>22 identification.)</p> <p>23 THE WITNESS: Okay.</p> <p>24 Q. (By Mr. Moore) Okay. This is a -- another</p> <p>25 excerpt of Slack conversations between you and Ms.</p> |

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| Page 202                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 204                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p>1 Sharkey; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And I want to direct your attention to the</p> <p>4 bottom of Page 7, which has a Bates No. 76863. Just</p> <p>5 let me know when you see that.</p> <p>6 A. Okay.</p> <p>7 Okay.</p> <p>8 Q. There is a message -- two messages from Ms.</p> <p>9 Sharkey to you on March 2nd, 2021; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And the first one is a link to the Rothy's</p> <p>12 website; is that right?</p> <p>13 A. It's a link to their sales page on their</p> <p>14 website.</p> <p>15 Q. What is their sales page?</p> <p>16 A. When they discount shoes, like they're</p> <p>17 discounted. There's a link to them doing a discounted</p> <p>18 sale on their website.</p> <p>19 Q. And you've looked at that website before?</p> <p>20 A. Yes.</p> <p>21 Q. And then Ms. Sharkey says, "Lots of</p> <p>22 learnings based on what is in here"; right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know whether you responded to that?</p> <p>25 A. I don't know.</p>                                                                                                                                                                                                                | <p>1 letter.</p> <p>2 Q. (By Mr. Moore) The cease and desist letter?</p> <p>3 A. Yes.</p> <p>4 Q. You say, "My only callout is I don't think</p> <p>5 we need to speculate on what they claim to, quote,</p> <p>6 own. We should wait for them to tell us."</p> <p>7 What did you mean there?</p> <p>8 A. On the images, the patent images that I saw,</p> <p>9 from my perspective, not as a legal eye, it was hard</p> <p>10 to know what specifically the patents were referring</p> <p>11 to.</p> <p>12 Q. And why was that hard for you to tell?</p> <p>13 A. Because it's a black-and-white photo and it</p> <p>14 looked very different than our Blackbird, so I was</p> <p>15 not -- I did not understand how we could possibly</p> <p>16 infringe when our shoe looked very different to what I</p> <p>17 was seeing in the patent.</p> <p>18 Q. Have you ever had any experience with</p> <p>19 looking at design patents before you received the</p> <p>20 cease -- cease and desist letter?</p> <p>21 A. No, never.</p> <p>22 Q. Do you have any under -- okay.</p> <p>23 Do you have any understanding of the -- the</p> <p>24 way drawings are done in design patents?</p> <p>25 A. I do not.</p>              |
| Page 203                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 205                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 Q. What type of learnings would you expect to</p> <p>2 find from the Rothy's sale website?</p> <p>3 A. I don't know what she was referring to.</p> <p>4 MR. MOORE: Again, Counsel, we'd ask</p> <p>5 for the full Slack messages here rather</p> <p>6 than just reflected excerpts.</p> <p>7 Q. (By Mr. Moore) And this -- this exchange of</p> <p>8 messages in which Ms. Sharkey is sending a link to the</p> <p>9 website of Rothy's, that's one week before the cease</p> <p>10 and desist letter was received; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And if you turn over two pages over,</p> <p>13 Page 9, the top, do you see a -- your message that</p> <p>14 says, "Hi, I'm free before 10:00 if you want to go to</p> <p>15 cease" -- "go through cease and desist legal contract</p> <p>16 together before responding"?</p> <p>17 A. Yes.</p> <p>18 Q. What does that refer to?</p> <p>19 MR. TELLEKSON: I'll caution you not</p> <p>20 to disclose anything that would involve</p> <p>21 discussion with counsel.</p> <p>22 THE WITNESS: I don't know if this is</p> <p>23 referring to a call we were going to have</p> <p>24 with our attorneys or what this is</p> <p>25 referring to, but it was referring to the</p> | <p>1 Q. Do you know, for example, what it means if</p> <p>2 you have a solid line versus what it means if you have</p> <p>3 a dotted line?</p> <p>4 A. No.</p> <p>5 Q. Okay. From looking at the Rothy's patents,</p> <p>6 did you see what you understood to be photographs or</p> <p>7 drawings of a knitted material?</p> <p>8 A. I'd have to see them again to be sure, but</p> <p>9 it was very hard for me to see -- to know what it was.</p> <p>10 It's a grainy black-and-white image.</p> <p>11 Q. Okay. Where did you get the patents from?</p> <p>12 A. From the cease and desist letter.</p> <p>13 Q. Did you actually -- right. Okay. No, I</p> <p>14 understand there were some images from some of the</p> <p>15 patents at least in the cease and desist letter; is</p> <p>16 that right?</p> <p>17 A. I'd have to go back to look at the actual</p> <p>18 letter, but I believe that was the first -- yes,</p> <p>19 that's where I saw them.</p> <p>20 Q. Okay. Let's pull that up again, please,</p> <p>21 that cease and desist letter, which is Exhibit 76.</p> <p>22 A. Yes.</p> <p>23 Q. And -- all right. And this is a</p> <p>24 black-and-white copy of the letter; correct?</p> <p>25 A. Yes.</p> |

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| Page 210                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 212                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1 (Plaintiff's Exhibit 79 was marked for<br/>2 identification.)<br/>3 THE WITNESS: Okay.<br/>4 Q. (By Mr. Moore) All right. Do you recall<br/>5 looking previously at the Slack messages in<br/>6 Exhibit 56?<br/>7 A. I don't know specifically which ones --<br/>8 Q. All right.<br/>9 A. I don't -- I can pull out Exhibit 56.<br/>10 Q. Yeah, let me try to just expedite it. What<br/>11 I'm trying to do is see if we can confirm that<br/>12 Exhibit 79 is the image that is included in the Slack<br/>13 conversation in Exhibit 56. So if you wouldn't mind<br/>14 taking a look at that and let me know.<br/>15 A. Okay. Oh, yes.<br/>16 Q. Okay. So the image in 79 is the one that<br/>17 was reproduced in Exhibit 56; is that right?<br/>18 A. Yes.<br/>19 Q. Okay. If you'd look at Exhibit 80, please.<br/>20 (Plaintiff's Exhibit 80 was marked for<br/>21 identification.)<br/>22 THE WITNESS: Okay.<br/>23 Q. (By Mr. Moore) Is this --<br/>24 MR. MOORE: And for the record, this<br/>25 is a Slack chat excerpt with Bates number</p> | <p>1 MR. MOORE: David -- Counsel, what I'm<br/>2 talking about is there is an image of<br/>3 something that people are reacting to that<br/>4 is in the Slack message that we can't see<br/>5 because you-all have neglected to provide<br/>6 all the images and truncated the<br/>7 conversations arbitrarily. This has been<br/>8 the subject, as you put it, of copious<br/>9 correspondence, and I understand you tried<br/>10 to fix this but -- fix it by pointing us to<br/>11 us -- to this document, but it doesn't fix<br/>12 the problem. So that's the issue. We'll<br/>13 deal with it offline.<br/>14 If you permit more time dealing with<br/>15 discovery deficiencies and less time<br/>16 lecturing, we might not be in this problem.<br/>17 Okay. Why don't we take a break.<br/>18 Five minutes?<br/>19 MR. TELLEKSON: Sure.<br/>20 VIDEOGRAPHER: The time is 4:00 p.m.<br/>21 We're now off the record.<br/>22 (A recess was taken.)<br/>23 VIDEOGRAPHER: The time is 4:15 p.m.<br/>24 We're back on the record.<br/>25 Q. (By Mr. Moore) Ms. Gates, I want to ask a</p> |
| Page 211                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 213                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 BIRDIES_00077204 through 77207.<br/>2 Q. (By Mr. Moore) Looking on the fourth page<br/>3 of four, is this the same Slack conversation that we<br/>4 looked at in Exhibit 65?<br/>5 A. I'd have to look at Exhibit 65. Let me<br/>6 look.<br/>7 Q. Please do.<br/>8 A. Yes.<br/>9 Q. Can you tell from Exhibit 80 what prompted<br/>10 this conversation?<br/>11 A. I don't know.<br/>12 Q. Megan says, "I saw this and literally<br/>13 thought it was us."<br/>14 Do you know what the "this" is?<br/>15 A. No.<br/>16 Q. Okay.<br/>17 MR. MOORE: Counsel, we'd renew that<br/>18 request. I know you tried to point us to<br/>19 this document, but it doesn't satisfy our<br/>20 previous request.<br/>21 MR. TELLEKSON: Counsel, you're<br/>22 asking -- you're asking what someone else<br/>23 meant. It's not surprising that the<br/>24 witness can't testify for someone else. I<br/>25 don't know what you're talking about.</p>                                                                                                                | <p>1 few questions about the Blackbird. For the knit<br/>2 Blackbird, do you know what type of knit is used?<br/>3 A. I do not.<br/>4 Q. Do you know if it's a double knit?<br/>5 A. I do not.<br/>6 Q. Do you know, have you ever heard of a double<br/>7 jacquard knit, J-A-C-Q-U-A-R-D?<br/>8 A. I have not.<br/>9 Q. You don't know if that's used in the knit<br/>10 Blackbird?<br/>11 A. I do not.<br/>12 Q. Did anybody at Birdies decide on the<br/>13 specific type of knitted material to use in the<br/>14 Birdies' knit Blackbird?<br/>15 A. Robyn would know.<br/>16 Q. All right. Now, I think we've covered one<br/>17 difference between the original calf hair Blackbird<br/>18 and the knit Blackbird is the former uses calf hair<br/>19 for the upper, and the latter uses a knitted material;<br/>20 correct?<br/>21 A. Yes.<br/>22 Q. The -- the knitted material in the knit<br/>23 Blackbird, do you know what material that is?<br/>24 A. I thought I just said I don't know.<br/>25 Q. You don't -- you don't know what specific</p>                                |



## ROTHY'S, INC. vs BIRDIES, INC.

Attorneys Eyes Only

Bianca Gates on 02/11/2022

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| Page 230                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 232                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p>1 were to run out of the house in the middle of the</p> <p>2 night with your shoes, it would be great that, you</p> <p>3 know, you could throw them in the wash, clean them up,</p> <p>4 and it's hard to do that with a velvet or a suede or a</p> <p>5 leather.</p> <p>6 Q. Okay. Is the knit used for the Blackbird in</p> <p>7 the Judy's collaboration the same as the knit in the</p> <p>8 other knit Blackbirds?</p> <p>9 A. I believe so.</p> <p>10 Q. And who was it that decided on the specific</p> <p>11 knit that is used in the knit Blackbird?</p> <p>12 A. I don't recall. I don't know.</p> <p>13 MR. MOORE: Okay. I'm told that we</p> <p>14 just got an e-mail with some additional</p> <p>15 materials. I think I'll need to take a</p> <p>16 break and take a look at that and see what</p> <p>17 to do. Why don't we go off the record.</p> <p>18 MR. TELLEKSON: Sure. That's fine.</p> <p>19 VIDEOGRAPHER: The time is 4:40 p.m.</p> <p>20 We're now off the record.</p> <p>21 (A recess was taken.)</p> <p>22 VIDEOGRAPHER: The time is 4:54 p.m.</p> <p>23 We're back on the record.</p> <p>24 MR. MOORE: Okay. We've just received</p> <p>25 in the last 20 minutes or so a couple of</p> | <p>1 Q. It's okay.</p> <p>2 A. I'm having trouble reading it.</p> <p>3 Q. It's fine. It's fine. If you need to walk</p> <p>4 over there and read it, go ahead.</p> <p>5 A. Okay.</p> <p>6 Q. All right. And so what we've marked as the</p> <p>7 first image in Exhibit 81, is that the screenshot that</p> <p>8 Ms. Longley sent you when she asked whether her</p> <p>9 response was the -- was an appropriate way to address</p> <p>10 comments comparing the knit Blackbird to Rothy's?</p> <p>11 A. Yes.</p> <p>12 Q. And this is the comment in her initial</p> <p>13 proposed response to Courtney Woodard Lewis on</p> <p>14 Facebook on February 9th; correct?</p> <p>15 A. Correct.</p> <p>16 Q. All right. If you'd scroll down a little</p> <p>17 bit further on Exhibit 54 to the next page, Page 4, do</p> <p>18 you see that you have a message from -- that says,</p> <p>19 "Hi. I think this needs to be edited. Do you know if</p> <p>20 she's a customer?"</p> <p>21 A. Yes.</p> <p>22 Q. And then you have a -- an image file</p> <p>23 directly below that?</p> <p>24 A. Yes.</p> <p>25 MR. MOORE: Could you go to the next</p> |
| Page 231                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 233                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 e-mails from Birdies' counsel with some of</p> <p>2 the screenshots we had requested.</p> <p>3 Q. (By Mr. Moore) Ms. Gates, do you have in</p> <p>4 front of you or can you pull up, please, Exhibit 54.</p> <p>5 A. Okay. It's up.</p> <p>6 Q. And this is a Slack message between you and</p> <p>7 Ms. Longley from February 9th of 2021; correct?</p> <p>8 A. Yes.</p> <p>9 MR. MOORE: Okay. Now, I would ask</p> <p>10 Ms. Moore to please share what we will mark</p> <p>11 as Exhibit 1 [sic], which is two JPEG files</p> <p>12 that we just received from Birdies'</p> <p>13 counsel.</p> <p>14 (Plaintiff's Exhibit 81-1 and 81-2</p> <p>15 were marked for identification.)</p> <p>16 Q. (By Mr. Moore) All right. If you look at</p> <p>17 Exhibit 54, on the third page, do you see the message</p> <p>18 from Ms. Longley that says, "Hi Bianca, is the</p> <p>19 following an appropriate way to address comments</p> <p>20 comparing us to Rothy's?"</p> <p>21 Are you still there?</p> <p>22 A. Yes. Sorry. I'm just reading it. Yeah.</p> <p>23 Q. Oh, it's on the big screen. Okay. You just</p> <p>24 disappeared.</p> <p>25 A. Yes. Oh. Sorry. Here.</p>                                      | <p>1 image in Exhibit 81, please, Ms. Moore.</p> <p>2 There we go. Can you blow that up any?</p> <p>3 THE WITNESS: I'm going to walk up to</p> <p>4 the screen again. It's very small.</p> <p>5 Q. (By Mr. Moore) Go ahead.</p> <p>6 My question will be is what's shown here on</p> <p>7 the second image of Exhibit 81 the screenshot that you</p> <p>8 sent to Ms. Longley when you told her that it needed</p> <p>9 to be edited?</p> <p>10 A. Yes.</p> <p>11 Q. And that is the Instagram post from</p> <p>12 kelseizetheday; right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Next, I'd like to go back, and if you</p> <p>15 would please pull up Exhibit 62. Let me know when you</p> <p>16 have it.</p> <p>17 A. Okay.</p> <p>18 Q. This is a Slack chat between you and Ms.</p> <p>19 Nasser about filming the video of the knit Blackbird a</p> <p>20 couple of weeks before it's released; correct?</p> <p>21 A. Correct.</p> <p>22 MR. MOORE: I'd like -- we're going to</p> <p>23 mark as Exhibit 82 one of the JPEG files we</p> <p>24 just received. I'll ask Ms. Moore to</p> <p>25 please show that.</p>                                |

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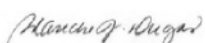
| Page 234                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 236                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1 (Plaintiff's Exhibit 82 was marked for<br/>2 identification.)</p> <p>3 Q. (By Mr. Moore) If you go to the bottom of<br/>4 Exhibit 62, you see the last two messages, one is a --<br/>5 a hyperlink to a file, and the last is you saying,<br/>6 "Oh, my God."</p> <p>7 A. Yes.</p> <p>8 Q. All right. Is the image that's being shown<br/>9 on Exhibit 82 on the screen the screenshot that Ms.<br/>10 Nasser sent you?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. And I have that right, it's Ms. Nasser;<br/>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. Or as you call her, CK?</p> <p>16 A. She's CK. Yep.</p> <p>17 Q. All right. Great -- or no, CQ; right?</p> <p>18 A. Well --</p> <p>19 Q. Well --</p> <p>20 A. This is why it got confusing. They're both<br/>21 Jacqueline, but one goes by Jackie, and the other one<br/>22 goes by Jacqueline. And so it just became easier CK,<br/>23 CQ. But their both names are Jacqueline.</p> <p>24 Q. I see that on the screenshot, it's Jackie,<br/>25 and on the Exhibit 62, it's Jacqueline. But she is</p>          | <p>1 A. Yes, or my eyes are bad.</p> <p>2 Q. Well, mine -- mine aren't great either, but<br/>3 I think it may be the image. But in any event, is<br/>4 that the screenshots that you sent to Ms. Sharkey when<br/>5 you made that comment?</p> <p>6 A. I -- I suppose so.</p> <p>7 Q. Okay. If you go to Page 15 of Exhibit 78 at<br/>8 Bates No. 76871. About halfway down the page,<br/>9 there's -- you see the comment, "Thanks, just another<br/>10 reminder that Rothy's is coming up with BS for the<br/>11 sake of it"?</p> <p>12 A. I'm sorry, on Page 15?</p> <p>13 Q. Yes. The PDF Page 15 of Exhibit 78.</p> <p>14 A. Oh. Right. Okay.</p> <p>15 Q. Do you see that message?</p> <p>16 A. Yes.</p> <p>17 Q. All right. And then below that, you see an<br/>18 image file referenced?</p> <p>19 A. Yes.</p> <p>20 Q. And is that the -- the image -- is what we<br/>21 see in Exhibit 83 that's on the screen the image that<br/>22 you attached there?</p> <p>23 A. I don't -- I don't know. I guess so.</p> <p>24 Q. Okay. Why did you consider that to be<br/>25 Rothy's coming up with BS?</p> |
| Page 235                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 237                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 CK; all right? Is that right?</p> <p>2 A. CK, yes.</p> <p>3 Q. Great. Last, if you could go back, please,<br/>4 to Exhibit 78.</p> <p>5 A. Okay.</p> <p>6 Q. And if you scroll to -- let's see where this<br/>7 is. I'm trying to find the image.</p> <p>8 MR. MOORE: We're having a little<br/>9 trouble finding the right image, but if we<br/>10 could go ahead and mark and display<br/>11 Exhibit 83, Ms. Moore.</p> <p>12 (Plaintiff's Exhibit 83 was marked for<br/>13 identification.)</p> <p>14 THE WITNESS: I'm going to come up to<br/>15 the screen and read it. It's very small.</p> <p>16 Q. (By Mr. Moore) Please.</p> <p>17 A. It's hard to read what this is, to be<br/>18 honest.</p> <p>19 Q. Yes. There's a message in which you write,<br/>20 "Thanks. Just another reminder that Rothy's is coming<br/>21 up with BS for the sake of it"; correct?</p> <p>22 A. Right. I can read that. What I'm referring<br/>23 to is the document.</p> <p>24 Q. Right. And you can't -- you -- you can't<br/>25 read the actual document because it's too blurry?</p> | <p>1 A. I don't remember what I was thinking, and<br/>2 I -- I -- it's unclear what this document is or what I<br/>3 was thinking at the time. I don't know.</p> <p>4 Q. Okay. I assume you're using BS in the<br/>5 normal colloquial sense there.</p> <p>6 A. Perhaps.</p> <p>7 Q. Okay. All right.</p> <p>8 MR. MOORE: I don't have any further<br/>9 questions for you at this time. I would<br/>10 reserve the right, just because we've<br/>11 gotten so much material, to re-call Ms.<br/>12 Gates based on belated production.</p> <p>13 I understand you don't agree with<br/>14 that, but I think we can agree that for<br/>15 today, that will conclude my questioning of<br/>16 this witness.</p> <p>17 Thank you very much for your time, Ms.<br/>18 Gates.</p> <p>19 MR. TELLEKSON: And I have no<br/>20 questions for this witness. Thank you very<br/>21 much.</p> <p>22 MR. MOORE: All right. We can go off<br/>23 the record.</p> <p>24 VIDEOGRAPHER: This is the end of<br/>25 Media 3. The time is 5:06 p.m. We're now</p>                                                                |



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Attorneys Eyes Only

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| <p align="right"><b>Page 238</b></p> <p>1 off the record.</p> <p>2 (Deposition concluded at 5:06 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p align="right"><b>Page 240</b></p> <p>1 STATE OF GEORGIA:</p> <p>2 COUNTY OF FULTON:</p> <p>3</p> <p>4 I hereby certify that the foregoing</p> <p>5 transcript was reported, as stated in the</p> <p>6 caption, and the questions and answers</p> <p>7 thereto were reduced to typewriting under</p> <p>8 my direction; that the foregoing pages</p> <p>9 represent a true, complete, and correct</p> <p>10 transcript of the evidence given upon said</p> <p>11 hearing, and I further certify that I am</p> <p>12 not of kin or counsel to the parties in the</p> <p>13 case; am not in the employ of counsel for</p> <p>14 any of said parties; nor am I in any way</p> <p>15 interested in the result of said case.</p> <p>16</p> <p>17</p> <p>18 </p> <p>19</p> <p>20 BLANCHE J. DUGAS, CCR-B-2290</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p align="right"><b>Page 239</b></p> <p>1 DISCLOSURE</p> <p>2</p> <p>3 Pursuant to Article 10.B of the Rules</p> <p>4 and Regulations of the Board of Court</p> <p>5 Reporting of the Judicial Council of</p> <p>6 Georgia which states: "Each court reporter</p> <p>7 shall tender a disclosure form at the time</p> <p>8 of the taking of the deposition stating the</p> <p>9 arrangements made for the reporting</p> <p>10 services of the certified court reporter,</p> <p>11 by the certified court reporter, the court</p> <p>12 reporter's employer or the referral source</p> <p>13 for the deposition, with any party to the</p> <p>14 litigation, counsel to the parties, or</p> <p>15 other entity. Such form shall be attached</p> <p>16 to the deposition transcript," I make the</p> <p>17 following disclosure:</p> <p>18</p> <p>19 I am a Georgia Certified Court</p> <p>20 Reporter. I am here as a representative of</p> <p>21 Huseby Global Litigation. Huseby Global</p> <p>22 Litigation was contacted to provide court</p> <p>23 reporting services for the deposition.</p> <p>24 Huseby Global Litigation will not be taking</p> <p>25 this deposition under any contract that is</p> <p>prohibited by O.C.G.A. 9-11-28(c).</p> <p>Huseby Global Litigation has no</p> <p>contract/agreement to provide reporting</p> <p>services with any party to the case, any</p> <p>counsel in the case, or any reporter or</p> <p>reporting agency from whom a referral might</p> <p>have been made to cover this deposition.</p> <p>Huseby Global Litigation will charge</p> <p>its usual and customary rates to all</p> <p>parties in the case, and a financial</p> <p>discount will not be given to any party to</p> <p>this litigation.</p> <p></p> <p>Blanche J. Dugas</p> <p>CCR No. B-2290</p> | <p align="right"><b>Page 241</b></p> <p>1 CAPTION</p> <p>2</p> <p>3 The Deposition of BIANCA GATES, taken in</p> <p>4 the matter, on the date, and at the time and place set</p> <p>5 out on the title page hereof.</p> <p>6</p> <p>7 It was requested that the deposition be</p> <p>8 taken by the reporter and that same be reduced to</p> <p>9 typewritten form.</p> <p>10</p> <p>11 It was agreed by and between counsel and</p> <p>12 the parties that the Deponent will read and sign the</p> <p>13 transcript of said deposition.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                               |